



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/166018

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on July 30, 2015, at Portage, Wisconsin. At the request of the parties, the record was held open for consecutive closing arguments to be submitted to the Division of Hearings and Appeals (DHA) and the other party. The agency representative submitted their initial and reply closing arguments to DHA and to petitioner. The petitioner submitted a one page responsive closing argument to DHA and the county agency. Those closing arguments are received into the hearing record.

The issue for determination is whether the county agency correctly determined petitioner was overpaid BadgerCare (BC) benefits totaling \$6,703 during the period of August 1, 2012 to August 1, 2014, due to petitioner's failure to report to the agency accurate household members (the father of her two children in her home and his income) resulting in BC income ineligibility in most months and unpaid BC premiums in other months of the overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], fraud worker
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Columbia County who resides with her three children.
2. The petitioner has two children in common with her boyfriend, [REDACTED].
3. The petitioner has received BadgerCare (BC) benefits since at least 2002 and is thus knowledgeable about the BC program. The petitioner received BC benefits for herself and her three children during the period of August 1, 2012 to August 1, 2014.
4. On July 11, 2012, the petitioner falsely reported her household composition to the county agency by stating that [REDACTED] was no longer residing in her home during the months of August, 2012 through July, 2014.
5. The agency established with testimony and evidence that [REDACTED] [REDACTED] resided in petitioner's household during the overpayment period of August 1, 2012 to August 1, 2014, but failed to report his residence and income to the county agency.
6. During the July 30, 2015 hearing after hearing the agency's case, petitioner basically stipulated that she was no longer disputing that based upon BadgerCare Manual, 2.3.1.1 [REDACTED] was residing in her home during the overpayment period and was also not disputing the calculation of her BC overpayment. Petitioner was only disputing that the overpayment was due to client error and argued that the overpayment was due to non-client or agency error.
7. [REDACTED] was employed at [REDACTED] Inc. as an operating engineer, and had the following earned income during petitioner's BC overpayment period: a) August, 2012 - \$5,830.17; b) September, 2012 - \$5,269.44; c) October, 2012 - \$3,461.26; d) November, 2012 - \$5,485.25; e) December, 2012 - \$4,870.44; f) January, 2013 - \$2,596.92; g) February, 2013 - \$2,536.82; h) March, 2013 - \$3,382.24; i) April, 2013 - \$1,989.60; j) May, 2013 - \$5,311.32; k) June, 2013 - \$6,77.94; l) July, 2013 - \$5,125.01; m) August, 2013 - \$7,151.31; n) September, 2013 - \$5,173.13; o) October, 2013 - \$4,999.02; p) November, 2013 - \$2,704.64; q) December, 2013 - \$2,120.20; r) January, 2014 - \$2,947.19; s) February, 2014 - \$3,556.43; t) March, 2014 - \$3,643.55; u) April, 2014 - \$5,532.10; v) May, 2014 - \$5,968.96; w) June, 2014 - \$7,144.87; and July, 2014 - \$5,486.66. Exhibits A3, and D1-D3.
8. The county agency discovered that [REDACTED] did reside in petitioner's household during the period in question, and that his income had not been timely reported to the county agency by petitioner.
9. During some of the months of the overpayment period, petitioner received some earned income and received some child support as indicated in Exhibit A3.
10. The petitioner's BC income eligibility limit of 200% for a BC household of five was the following during her overpayment period: a) \$3,841.67 as of August, 2012; b) \$3,925 as of February, 2013; and c) \$3,975 as of February, 2014.
11. The petitioner's BC income limit of 133% for BC premiums to be due for her household was the following during her overpayment period: a) \$2,554.70 as of August, 2012; b) \$2,610.12 as of February, 2013; and c) \$2,643.37 as of February, 2014.
12. The amount of the petitioner's total household income is not disputed in this overpayment appeal.
13. [REDACTED]'s earned income was not included in determining petitioner's BC eligibility and benefits for the BC overpayment period of August, 2012 through July, 2014 creating petitioner's BC overpayment.

14. Mr. [REDACTED]'s earned income was not included in determining petitioner's BC eligibility and BC premiums due for the entire BC overpayment period of August, 2012 through July, 2014 creating petitioner's BC overpayment.
15. The petitioner's household's was above the BC income eligibility limit for a household of five during many months of the BC overpayment and BC premiums were owed in other months of that overpayment as established in Exhibits E, F and A1 - A3.
16. On May 7, 2015, the county agency sent four Notices of BadgerCare Overpayment to the petitioner informing that she was overissued a total of \$6,703 in BC benefits from August 1, 2012 to August 1, 2014, due to her failure to report to the county agency accurate household members (her boyfriend and father of two of her children in her home) and his earned income. The overpayment worksheets explained in detail how the \$6,703 overpayment had been calculated based upon those unpaid BadgerCare premiums for incorrectly paid BC payments during the overpayment period of August, 2012 through July, 2014.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BCP payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report income information, which in turn gives rise to a BCP overpayment:

49.497 Recovery of incorrect medical assistance payments. (1) (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s.49.665 if the incorrect payment results from any of the following:

1. A **misstatement** or omission of fact by a person supplying information in an application for benefits *under this subchapter* or s.49.665.

2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.

3. ***The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.***

(b) The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. ...

(Emphasis added)

Wis. Stat. §49.497(1). BCP is in the same subchapter as §49.497. See also, *BCP Eligibility Handbook(BCPEH)*, §28.1, online at <http://www.emhandbooks.wi.gov/bcplus/> :

28.1 OVERPAYMENTS.

An "overpayment" occurs when BC+ benefits are paid for someone who was not eligible for them or when BC+ premium calculations are incorrect. The amount of recovery may not exceed the amount of the BC+ benefits incorrectly provided. Some examples of how overpayments occur are:

1. **Concealing or not reporting income.**
2. **Failure to report a change in income.**
3. Providing misinformation at the time of application regarding any information that would affect eligibility.

(Emphasis added).

28.2 RECOVERABLE OVERPAYMENTS.

Initiate recovery for a BC+ overpayment, if the incorrect payment resulted from one of the following:

1. Applicant /Member Error

Applicant/Member error exists when an applicant, member or any other person responsible for giving information on the member's behalf unintentionally misstates (financial or non-financial) facts, which results in the member receiving a benefit that s/he is not entitled to or more benefits than s/he is entitled to. Failure to report non-financial facts that impact eligibility or cost share amounts is a recoverable overpayment.

2. ... Fraud. ...

BCPEH, §28.1 – 28.2.

The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In this case, the county agency proved by the preponderance of the evidence through credible testimony (fraud worker [REDACTED] and fraud investigator [REDACTED]) and voluminous exhibits that the basis for the overpayment was client error, and not agency error. The county agency established with reliable evidence that the petitioner falsely reported on July 11, 2012 that her boyfriend, [REDACTED], was no longer residing in her household. The hearing record indicates that while [REDACTED] did travel out of town for his employment for [REDACTED] Inc. and stay at some hotels on overnight trips, he nevertheless continued to reside with the petitioner. The petitioner was unable to establish any other home address for her boyfriend.

The petitioner did not dispute that [REDACTED] was the father of two of her children. BadgerCare policy clearly indicates that as long as the father of a child in common is residing in the other parent's home, the father's income must be counted in determining the household's eligibility and premiums. BadgerCare Eligibility Handbook, §2.3.1.1, "Parents and Caretaker Relatives." The petitioner was unable to refute that such policy required [REDACTED]'s income to be counted for her BC household. As a result [REDACTED] was part of the petitioner's BC household, and his income had not been used to determine her BC eligibility and benefits which, in turn, gave rise to the BC overpayments during the period of August, 2012 through July, 2014.

During the July 30, 2015 hearing (after hearing the agency's case), petitioner indicated she was no longer disputing that based upon the BadgerCare Eligibility Handbook, §2.3.1.1 [REDACTED] was residing in her home during the overpayment period and was not disputing the calculation of her BC overpayment. Petitioner was only disputing that the overpayment was due to client error and argued that the overpayment was due to non-client or agency error.

During the hearing and in her one page responsive closing argument, the petitioner alleged unconvincingly that the agency workers were not clear enough to her that her boyfriend needed to be included in her household. However, the hearing record is clear that on July 11, 2012, petitioner simply informed the agency that [REDACTED] was no longer in her household, not that he was doing some traveling and wondered whether he nevertheless should continue to be included in her household. The agency established that petitioner had many opportunities to report that [REDACTED] was in her home in her six month report forms (SMRFs) on December 3, 2012, and December 5, 2013, in addition to phone interviews on June 6, 2013 and June 11, 2014.

If petitioner was legitimately confused about whether she should include [REDACTED] in her BC household, there is no record that she raised any issue during those phone interviews or any other communication with the agency during the period of her BC overpayment. In his responsive closing argument, agency representative, [REDACTED] argued an explanation as to why petitioner had a motive to mislead the agency: “. . . Removing Mr. [REDACTED] from the household allowed for BC+ benefits without a premium due (Exhibit 2). Also at the time Ms. [REDACTED] reported Mr. [REDACTED] out of the home she did not offer any elaboration regarding that he was out of the home to travel for work, she simply reported that he was no longer in the home.”

Second, the petitioner argued that the BC overpayment was due to agency error because she allegedly submitted her lease on multiple occasions, but the agency neglected to update her case with current household composition. Such allegation is incorrect. The petitioner did not provide her lease (Exhibit 4) to the agency until after a review was conducted December 11, 2014, long after the overpayment period of August, 2012 through July, 2014. Petitioner appears to have submitted that lease because the agency questioned her household composition because her high rent seemed incompatible with her limited income with including her boyfriend's earned income.

Third, the petitioner was aware of the need to make change reports to the agency, because she did report some changes on ACCESS (including change report dated March 17, 2014 when she had a new pregnancy. However, petitioner never reported any “change” to the agency that her boyfriend had returned to reside in her home with her after the July 11, 2012 false report of his leaving. The petitioner's testimony lacked credibility.

Finally, petitioner alleged that the agency workers were not well-trained and provided misleading or inaccurate information to her regarding her reporting requirements. However, during the BC overpayment period, the agency did mail to petitioner many notices informing her of the information the agency was using to determine her benefit eligibility and informing her of her responsibility to report any inaccuracies or changes to the agency. The petitioner failed to do so even though she is well aware of BC rules due to receiving BC benefits since 2002.

During the hearing and in her written argument, the petitioner was unable to refute the county's case, or undermine any of its documentation that it was correctly seeking an MA overpayment against the petitioner during the period of August, 2012 through July, 2014 due to client error. Furthermore, petitioner was also unable to establish any error in the county's calculation of her BC overpayment, or that she had made any payments towards that overpayment. Accordingly, for the above reasons, I conclude that the county agency correctly determined petitioner was overpaid BadgerCare (BC) benefits

totaling \$6,703 during the period of August 1, 2012 to August 1, 2014, due to petitioner's failure to report to the agency accurate household members (the father of her two children in her home and his income) resulting in BC income ineligibility in most months and unpaid BC premiums in other months of the overpayment.

CONCLUSIONS OF LAW

The county agency correctly determined petitioner was overpaid BadgerCare (BC) benefits totaling \$6,703 during the period of August 1, 2012 to August 1, 2014, due to petitioner's failure to report to the agency accurate household members (the father of her two children in her home and his income) resulting in incorrectly paid BC payments and unpaid BC premiums.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

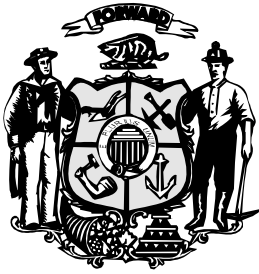
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of November, 2015

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 9, 2015.

Dane County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability